

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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RUSSEL AZUETA,

Plaintiff,

-against-

CITY OF NEW YORK, POLICE OFFICER ROBERT  
JACKSON (6<sup>TH</sup> PRECINCT) & JOHN DOE POLICE  
OFFICERS 1-2,

Defendants.

----- x

**ANSWER**

08 CV 1883 (JGK)(KNF)

Jury Trial Demanded

Defendants City of New York and Robert Jackson by their attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, for their Answer to the Complaint, respectfully allege, upon information and belief, as follows:

1. Deny the allegations set forth in paragraph "1" of the Complaint, except admit that plaintiff purports to bring this action as stated therein.
2. Deny the allegations set forth in paragraph "2" of the Complaint.
3. Deny the allegations set forth in paragraph "3" of the Complaint.
4. Deny the allegations set forth in paragraph "4" of the Complaint.
5. Deny the allegations set forth in paragraph "5" of the Complaint.
6. Deny the allegations set forth in paragraph "6" of the Complaint, except admit that plaintiff purports to invoke the jurisdiction of this Court as stated therein.
7. Deny the allegations set forth in paragraph "7" of the Complaint, except admit that plaintiff purports to base venue as stated therein.
8. Deny the allegations set forth in paragraph "8" of the Complaint, except admit that a document that plaintiff purports to be notice of claim was received on or about January 18, 2008.

9. Deny the allegations set forth in paragraph “9” of the Complaint, except admit that a complaint was filed on or about February 26, 2008.

10. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “10” of the Complaint.

11. Deny the allegations set forth in paragraph “11” of the Complaint, except admit that Robert Jackson is employed by the City of New York as a police officer.

12. Deny the allegations set forth in paragraph “12” of the Complaint except admit that the City of New York is a municipal corporation incorporated under the laws of the State of New York and respectfully refer the Court to the New York State Charter.

13. In response to the allegations set forth in paragraph “13” of the Complaint, defendants repeat and reallege all the preceding paragraphs of this answer, as if fully set forth herein.

14. Deny the allegations set forth in paragraph “14” of the Complaint.

15. Deny the allegations set forth in paragraph “15” of the Complaint.

16. Deny the allegations set forth in paragraph “16” of the Complaint.

17. In response to the allegations set forth in paragraph “17” of the Complaint, defendants repeat and reallege all the preceding paragraphs of this answer, as if fully set forth herein.

18. Deny the allegations set forth in paragraph “18” of the Complaint.

19. Deny the allegations set forth in paragraph “19” of the Complaint.

20. Deny the allegations set forth in paragraph “20” of the Complaint.

21. In response to the allegations set forth in paragraph “21” of the Complaint, defendants repeat and reallege all the preceding paragraphs of this answer, as if fully set forth herein.

22. Deny the allegations set forth in paragraph “22” of the Complaint.

23. Deny the allegations set forth in paragraph “23” of the Complaint.

24. Deny the allegations set forth in paragraph “24” of the Complaint.

25. In response to the allegations set forth in paragraph “25” of the Complaint, defendants repeat and reallege all the preceding paragraphs of this answer, as if fully set forth herein.

26. Deny the allegations set forth in paragraph “26” of the Complaint.

27. Deny the allegations set forth in paragraph “27” of the Complaint.

28. In response to the allegations set forth in paragraph “28” of the Complaint, defendants repeat and reallege all the preceding paragraphs of this answer, as if fully set forth herein.

29. Deny the allegations set forth in paragraph “29” of the Complaint.

30. Deny the allegations set forth in paragraph “30” of the Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

31. The Complaint fails to state a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

32. Defendants have not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

33. At all times relevant to the acts alleged in the Complaint, the duties and functions of the municipal defendant's officials entailed the reasonable exercise of proper and lawful discretion. Therefore, defendant City of New York has governmental immunity from liability.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

34. Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct or the culpable and/or negligent conduct of others and was not the proximate result of any act of the defendants.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

35. Punitive damages cannot be assessed against the City of New York.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

36. At all times relevant to the acts alleged in the Complaint, defendants acted reasonably in the proper and lawful exercise of their discretion.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

37. Plaintiff's claims may be barred, in whole or in part, because plaintiff may have failed to comply with all conditions precedent to suit.

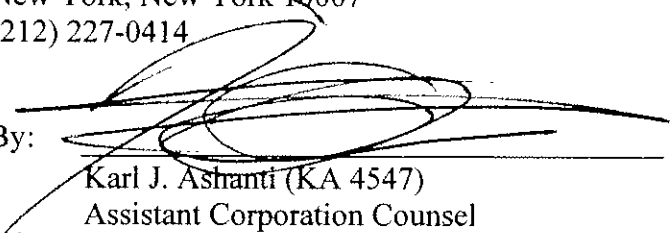
**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

38. The individual defendant did not violate any clearly established constitutional or statutory right of which a reasonable person would have known, and, therefore, is protected by qualified immunity.

**WHEREFORE**, defendants request judgment dismissing the Complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
May 19, 2008

MICHAEL A. CARDOZO  
Corporation Counsel of the  
City of New York  
Attorney for Defendants City of New York and  
Robert Jackson  
100 Church Street  
New York, New York 10007  
(212) 227-0414

By:   
Karl J. Ashanti (KA 4547)  
Assistant Corporation Counsel  
Special Federal Litigation Division


To: Carmen S. Giordano, Esq. (By ECF and Mail)  
Law Office of Carmen S. Giordano  
Attorney for Plaintiff  
225 Broadway, 40<sup>th</sup> Floor  
New York, New York 10007  
(212) 406-9466

**DECLARATION OF SERVICE BY ECF AND FIRST-CLASS MAIL**

I, **Karl J. Ashanti**, declare, pursuant to 28 U.S.C. § 1746, under penalty of perjury, that on **May 19, 2008**, I served the annexed **Answer** by ECF and by depositing a copy of the same, enclosed in a first-class postpaid properly addressed wrapper, in a post office official depository under the exclusive care and custody of the United States Postal Service, within the State of New York, upon the following:

Carmen S. Giordano, Esq.  
Law Office of Carmen S. Giordano  
225 Broadway, 40<sup>th</sup> Floor  
New York, New York 10007

Dated: New York, New York  
May 19, 2008



Karl J. Ashanti  
Assistant Corporation Counsel

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-against-

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DOE POLICE OFFICERS 1-2,

Defendants.

**ANSWER**

***MICHAEL A. CARDOZO***

*Corporation Counsel of the City of New York  
Attorney for Defendants City of New York  
100 Church Street  
New York, N.Y. 10007*

*Of Counsel: Karl J. Ashanti  
Tel: (212) 227-0414  
NYCLIS No. 2008-007106*

*Due and timely service is hereby admitted.*

*New York, N.Y. ...., 200.....*

*..... Esq.*

*Attorney for .....*